

PATENT

Docket No. GB920000066US1

11/17/03
#13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTORS: D.C. Fallside et al.

Examiner: M. Cuff

Art Unit: 3627

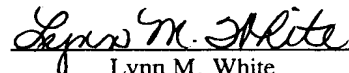
APPLICATION NO. 09/583,479

FILED: May 31, 2000

TITLE: APPARATUS AND METHOD FOR OPTIMIZING GROUP
BULK PURCHASES

CERTIFICATE OF MAIL

I hereby certify that this paper is being deposited with the U.S. Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, MAIL STOP APPEAL BRIEF-PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450, Attention: Board of Patent Appeals and Interferences on November 10, 2003.


Lynn M. White

Commissioner for Patents
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APPELLANTS' BRIEF

This brief is in furtherance of the Notice of Appeal filed in this case on
September 4, 2003.

This brief is transmitted in triplicate.

1. REQUIRED FEE

The requisite fee (\$330.00) set forth in §1.17(f) is authorized to be charged to Deposit Account No. 09-0461.

2. REAL PARTY IN INTEREST

The present application is assigned to International Business Machines Corporation, having its principal place of business at New Orchard Road, Armonk, NY, 10504. Accordingly, International Business Machines Corporation is the real party in interest.

3. RELATED APPEALS AND INTERFERENCES

The appellant, assignee, and the legal representatives of both are unaware of any other appeal or interference which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

4. STATUS OF CLAIMS

- A. Claims canceled: None
- B. Claims withdrawn from consideration but not canceled: None
- C. Claims pending: 1-13
- D. Claims allowed: None
- E. Claims rejected: 1-13
- F. Claims appealed: 1-13

Appealed claims 1-13 as currently pending are attached as Appendix A hereto.

5. STATUS OF AMENDMENTS

No amendment after final was filed in the present case. A Reply was filed on March 21, 2003 and resulted in the final Office Action appealed herein. A Reply under 37 CFR §1.116 was filed on September 4, 2003, but did not result in allowance by the Examiner.

6. SUMMARY OF THE CLAIMED INVENTION

The present invention provides a method for placing a group order, mediated by a system having one or more computers, the method comprising the steps of publishing, by a publisher, information about a quantity of material; subscribing, via a subscriber, to a topic comprising the published information; receiving, via a subscriber, the published information; aggregating, via a subscriber, the information from at least one of the publishers; and responsive to the stop of aggregating, selecting, based on at least one criterion, a best time to place the group order. The present invention utilizes the well-known concept of pub/sub technology to publish information, the content of which is matched with the interest of subscribers, and forward this information to the subscribers. As part of the pub/sub process, a pub/sub mechanism “mediates” the matching of buyers to sellers.

U.S. Patent No. 6,418,415 to Walker et al.

U.S. Patent No. 6,418,415 to Walker et al. ("Walker") teaches an aggregate conditional purchase offer (CPO) management system for receiving and processing CPOs from buyers for one or more goods or services. Received CPOs are processed to determine whether the CPO should be provided to sellers individually and/or collectively as part of an aggregate CPO. If a CPO is accepted individually, or collectively as part of an aggregate CPO, the buyer is bound on behalf of the accepting seller. CPOs are administered on behalf of groups of buyers to form aggregate CPOs which are offered to sellers.

The system described and disclosed in Walker is in accordance with the prior art cited in the present application, specifically, U.S. Patent No. 6,047,266 to Van Horn et al.

7. ISSUES

A. ISSUE INVOLVING CLAIMS 1-13

1. Whether the Examiner improperly rejected the claims because the cited prior art fails to teach or suggest the use of pub/sub technology as the term is known in the field, and as it is described in the specification.

8. GROUPING OF CLAIMS

A. Claims 1-13 stand or fall together.

9. ARGUMENT

As noted above, the present invention expressly discloses and claims a pub/sub model of operation in the context of making group bulk purchases, whereby information is published, by a publisher, about a quantity of material, subscribers subscribe to a topic comprising the information published by the publisher, this information is received by the subscribing parties, and the information from at least one of the publishers is aggregated via the subscriber, whereby responsive to the aggregating step, the best time and place to place a group order is selected. Using pub/sub technology to enable this process, a community of customers, for example, living in a reasonably small geographical area, and all of whom use a particular commodity, such as heating oil, are able to act together in purchasing the commodity. The use of pub/sub technology makes this simple and easy to perform.

The Cited Prior Art Does Not Anticipate the Claimed Invention

The MPEP and case law provide the following definition of anticipation for the purposes of 35 U.S.C. §102:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP §2131 citing *Verdegaal Bros. v. Union Oil Company of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987)

The Examiner Has Not Established a *prima facie* Case of Anticipation

The Examiner has argued that Walker et al. describes a system that anticipates applicant's claims under 35 U.S.C. §102(b). Walker et al. describes a system that is in

accordance with the already-cited prior art shown in the application (U.S. Patent No. 6,047,266 to van Horn et al.) and it, like van Horn et al., differs substantially from the presently-claimed invention in several particular respects as will be discussed in further detail.

First, Walker does not show in his step 1304 cited by the Examiner, any “subscribing” to a topic. What this step actually shows in Walker is “a central controller receiving the conditions, price and expiration date associated with the conditional purchase order (CPO) from the buyer, including a description of each good or service, and an identifier of a general purpose account from which funds may be paid, such as a credit or debit card account”. This has nothing to do with any publish/subscribe model of operation in that all that the buyer is required to do is to send a CPO directly to a vendor. There is no mediation by any publish/subscribe mechanism of any kind taught by Walker or in any way suggested by this type of operation.

Secondly, the Examiner’s citation of step 1344 of Walker et al. does not show aggregating the requests from multiple buyers. What step 1344 teaches in Walker et al. is “when the received CPO does not meet the criteria to submit a request to the buyer to modify the original conditions of the CPO to meet the conditions of an existing CPO, then the program control proceeds to step 1344, discussed below, to process the received CPO individually in a conventional manner.” This shows an order being processed individually, not in response to an aggregation of orders by buyers.

Finally, the Examiner’s citation of step 1410 of Walker et al. does not serve to teach or suggest a step of publishing. In Walker, the response is simply sent as a response to an

individual, and comprises only the acceptance of the CPO and "Thereafter, the response of each accepting seller is received during step 1410". This process does not correspond to the publish/subscribe model of the presently-claimed invention because all that the buyer of Walker et al. is doing is sending an acceptance directly to a vendor. There is no mediation by any publish/subscribe mechanism taught or suggested. Like the van Horn patent cited in the present application, the problem faced by users of Walker is typically one of satisfying demand for countable units of products: tickets, cameras, cars and so on, at the best price the customers will bear. When the cooperative purchase process closes a deal, the customers receive their allocated units from the inventory of the supplier. The discount gained is typically based on the number of units included in the deal; the more units ordered in one deal, the lower the price (down to some base price that represents the lowest price at which the seller is willing to sell).

Typically also, the items purchased using such a system are one-off purchases, such as travel tickets, cars, electronic goods, and so on. The solutions provided in the art fit this model extremely well, but are not easy to adapt to a different model of commerce, such as a repeating bulk product replenishment or bulk material removal service market.

The claimed invention specifically and clearly claims the publish and subscribe technique of the present invention, and the claimed invention is easily adapted to a repeating bulk product replenishment or bulk market removal service market. Walker is devoid of any such teaching. In view of the substantial differences between the prior art cited by the

November 10, 2003

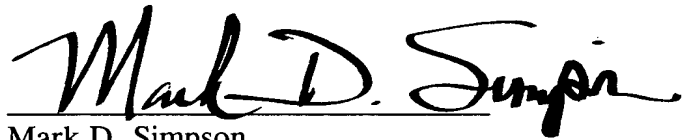
Examiner and the claims presented, the Examiner's reconsideration of these claims on their merits and a withdrawal of the rejections is respectfully requested.

10. CONCLUSION

For the foregoing reasons applicants respectfully request this Board to overrule the Examiner's rejections and allow claims 1-13.

Respectfully submitted:

11/10/03
Date

A handwritten signature in black ink that reads "Mark D. Simpson". The signature is written in a cursive, flowing style. The first name "Mark" is written with a large, prominent "M". The last name "Simpson" is written with a large, prominent "S". The signature is written over a horizontal line.

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APPENDIX A

CLAIMS INVOLVED IN THIS APPEAL:

1. (Original) A method for placing a group order, mediated by a system having one or more computers, the method comprising the steps of:

publishing, by a publisher, information about a quantity of a material;

subscribing, via a subscriber, to a topic comprising said information;

receiving, via a subscriber, said information;

aggregating, via a subscriber, said information from at least one of said publishers; and

responsive to said step of aggregating, selecting based on at least one criterion a best time to place said group order.

2. (Original) A method as claimed in claim 1, wherein said criterion comprises at least one of a time criterion, a price criterion, a quantity criterion and an urgency criterion.

3. (Original) A method as claimed in claim 1, wherein said order is an order for a bulk good.

4. (Original) A method as claimed in claim 1, wherein said information comprises information about a remaining quantity of a material.

5. (Previously amended) A method as claimed in claim 1, wherein said order comprises an order in partial satisfaction of said criterion.

6. (Original) A method as claimed in claim 1, wherein at least one of said publishers comprises an automatic monitoring system.

7. (Original) A computer program product tangibly stored on a computer readable medium and comprising computer program instructions to, when loaded into a computer and executed thereon, perform the steps of the method as claimed in claim 1.

8. (Original) A computer system for placing a group order, the computer system comprising:

means for publishing, by a publisher, information about a quantity of a material;
means for subscribing, via a subscriber, to a topic comprising said information;
means for receiving, via a subscriber, said information;
means for aggregating, via a subscriber, said information from at least one of said publishers; and
means for selecting based on at least one criterion, a best time to place said group order.

9. (Original) A computer system as claimed in claim 8, wherein said criterion comprises at least one of a time criterion, a price criterion, a quantity criterion and an urgency criterion.

10. (Original) A computer system as claimed in claim 8, wherein said order is an order for a bulk good.

11. (Original) A computer system as claimed in claim 8, wherein said information comprises information about a remaining quantity of a material.

12. (Original) A computer system as claimed in claim 8, wherein said group purchase comprises partial satisfaction of said criterion in said information of said at least one publisher.

13. (Original) A computer system as claimed in claim 8, wherein at least one of said publishers comprises an automatic monitoring system.